

# PUBLIC SAFETY DEPARTMENT[661]

## Adopted and Filed Emergency

Pursuant to the authority of 2009 Iowa Acts, Senate File 340, section 29, the Department of Public Safety hereby amends Chapter 83, "Iowa Sex Offender Registry," Iowa Administrative Code.

Legislation creating the Iowa Sex Offender Registry was enacted in 1995, and the Registry began operation that year. Various revisions to the Registry have been enacted and implemented in the intervening years. Major revisions to the Registry and to the treatment of sex offenders in the State of Iowa were enacted this year in 2009 Iowa Acts, Senate File 340. This rule making implements the changes made by that legislation.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the new legislation took effect on July 1, 2009. Provisions of the statute which are in conflict with the current rules would override those rules. Confusion will be minimized by amending the rules immediately to be consistent with the amended statute.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective July 1, 2009. The public will benefit from requirements for registrants which are as clear as possible; this will be facilitated by making the rules consistent with the amended statute on the date on which the amendments to the statute take effect, which is July 1, 2009.

These amendments are also published herein under Notice of Intended Action as **ARC 7975B** to allow an opportunity for public comment on the amendments. A public hearing on the amendments proposed in the Notice of Intended Action is scheduled for September 8, 2009.

These amendments are intended to implement Iowa Code chapter 692A as amended by 2009 Iowa Acts, Senate File 340.

These amendments became effective July 1, 2009.

The following amendments are adopted.

ITEM 1. Rescind subrules **83.2(1)** to **83.2(13)**.

ITEM 2. Adopt the following new definitions in rule **661—83.2(692A)**:

"*Aggravated offense*" means a conviction for any of the following offenses:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.
4. Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1 or 2.
5. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
6. Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph

"d."

7. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the commission of the offense.

8. Murder in violation of Iowa Code section 707.2 or 707.3, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.

9. Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph "a."

10. Any conviction for an offense specified in the laws of another jurisdiction or any conviction for an offense prosecuted in a federal, military, or foreign court that is comparable to an offense listed in paragraphs "1" through "9" shall be considered an aggravated offense for purposes of registering under this chapter.

"*Aggravated offense against a minor*" means a conviction for any of the following offenses, if such offense was committed against a minor or otherwise involves a minor:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.

2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section 709.4, except for a violation of Iowa Code section 709.4, subsection 2, paragraph “c,” subparagraph (4).

“*Appearance*” means to appear in person at a sheriff’s office.

“*Business day*” means every day except Saturday, Sunday, or any paid holiday for county employees in the applicable county.

“*Change*” means to add, begin, or terminate.

“*Child care facility*” means the same as defined in Iowa Code section 237A.1.

“*Convicted*” means found guilty of, pleads guilty to, or is sentenced or adjudicated delinquent for an act which is an indictable offense in this state or in another jurisdiction including in a federal, military, tribal, or foreign court, including but not limited to a juvenile who has been adjudicated delinquent but whose juvenile court records have been sealed under Iowa Code section 232.150, and a person who has received a deferred sentence or a deferred judgment or has been acquitted by reason of insanity. “*Convicted*” includes the conviction of a juvenile prosecuted as an adult. “*Convicted*” also includes a conviction for an attempt or conspiracy to commit an offense. “*Convicted*” does not mean a plea, sentence, adjudication, deferred sentence, or deferred judgment which has been reversed or otherwise set aside.

“*Criminal or juvenile justice agency*” means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

“*Department*” means the department of public safety.

“*Employee*” means an offender who is self-employed, employed by another, and includes a person working under contract or acting or serving as a volunteer, regardless of whether the self-employment, employment by another, or volunteerism is performed for compensation.

“*Employment*” means acting as an employee.

“*Foreign court*” means a court of a foreign nation that is recognized by the United States Department of State that enforces the right to a fair trial during the period in which a conviction occurred.

“*Habitually lives*” means living in a place with some regularity, and with reference to where the sex offender actually lives, which could be some place other than a mailing address or primary address but would entail a place where the sex offender lives on an intermittent basis.

“*Incarcerated*” means to be imprisoned by placing a person in a jail, prison, penitentiary, juvenile facility, or other correctional institution or facility or a place or condition of confinement or forcible restraint regardless of the nature of the institution in which the person serves a sentence for a conviction.

“*Internet identifier*” means an electronic mail address, instant message address or identifier, or any other designation or moniker used for self-identification during Internet communication or posting, including all designations used for the purpose of routing or self-identification in Internet communications or postings.

“*Jurisdiction*” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, or a federally recognized Indian tribe.

“*Loiter*” means remaining in a place or circulating around a place under circumstances that would warrant a reasonable person to believe that the purpose or effect of the behavior is to enable a sex offender to become familiar with a location where a potential victim may be found, or to satisfy an unlawful sexual desire, or to locate, lure, or harass a potential victim.

“*Military offense*” means a sex offense specified by the U.S. Secretary of Defense under 10 U.S.C. Section 951.

“*Minor*” means a person under 18 years of age.

“*Principal residence*” for a sex offender means:

1. The residence of the offender, if the offender has only one residence in this state.
2. The residence at which the offender resides, sleeps, or habitually lives for more days per year than another residence in this state, if the offender has more than one residence in this state.

3. The place of employment or attendance as a student, or both, if the sex offender does not have a residence in this state.

*“Professional licensing information”* means the name or other description, number, if applicable, and issuing authority or agency of any license, certification, or registration required by law to engage in a profession or occupation held by a sex offender who is required at the time of the initial requirement to register under this chapter, or any such license, certification, or registration that was issued to an offender within the five-year period prior to conviction for a sex offense that requires registration under this chapter, or any such license, certification, or registration that is issued to an offender at any time during the duration of the registration requirement.

*“Public library”* means any library that receives financial support from a city or county pursuant to Iowa Code section 256.69.

*“Registrant”* means a person who is currently registered with the Iowa sex offender registry.

*“Relevant information”* means the following information with respect to a sex offender:

1. Criminal history, including warrants, articles, status of parole, probation, or supervised release, date of arrest, date of conviction, and registration status.
2. Date of birth.
3. Passport and immigration documents.
4. Government-issued driver’s license or identification card.
5. DNA sample.
6. Educational institutions attended as a student, including the name and address of such institutions.
7. Employment information, including name and address of employer.
8. Fingerprints.
9. Internet identifiers.
10. Names, nicknames, aliases, or ethnic or tribal names, and, if applicable, the real names of an offender protected under 18 U.S.C. Section 3521.
11. Palm prints.
12. Photographs.
13. Physical description, including scars, marks, or tattoos.
14. Professional licensing information.
15. Residence.
16. Social security number.
17. Telephone numbers, including any landline or wireless numbers.
18. Temporary lodging information, including dates when residing in temporary lodging.
19. Statutory citation and text of offense committed that requires registration under this chapter.
20. Vehicle information for a vehicle owned or operated by an offender, including license plate number, registration number, or other identifying number, vehicle description, and the permanent or frequent locations where the vehicle is parked, docked, or otherwise kept.
21. The name, gender, and date of birth of each person residing in the residence.

EXCEPTION: “Relevant information” does not include relevant information in paragraphs “1” and “19,” when a sex offender is required to provide relevant information pursuant to this chapter.

*“Residence”* means each dwelling or other place where a sex offender resides, sleeps, or habitually lives, or will reside, sleep, or habitually live, including a shelter or group home. If a sex offender does not reside, sleep, or habitually live in a fixed place, “residence” means a description of the locations where the offender is stationed regularly, including any mobile or transitory living quarters. “Residence” shall be construed to refer to the places where a sex offender resides, sleeps, habitually lives, or is stationed with regularity, regardless of whether the offender declares or characterizes such place as the residence of the offender.

*“Sex act”* means the same as the term is defined in Iowa Code section 702.17.

*“Sex offender”* means a person who is required to be registered under Iowa Code chapter 692A as amended by 2009 Iowa Acts, Senate File 340.

*“Sex offense”* means an indictable offense for which a conviction has been entered that has an element involving a sexual act, sexual contact, or sexual conduct, and which is enumerated in 2009 Iowa Acts, Senate File 340, section 2, and means any comparable offense for which a conviction has been entered under prior law, or any comparable offense for which a conviction has been entered in a federal, military, or foreign court, or another jurisdiction.

*“Sex offense against a minor”* means an offense for which a conviction has been entered for a sex offense classified as a tier I, tier II, or tier III offense under this chapter if such offense was committed against a minor or otherwise involves a minor.

*“Sexually violent offense”* means an offense for which a conviction has been entered for any of the following indictable offenses:

1. Sexual abuse as defined under Iowa Code section 709.1.
2. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
3. Sexual misconduct with offenders and juveniles in violation of Iowa Code section 709.16.
4. Any of the following offenses, if the offense involves sexual abuse or assault with intent to commit sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.
5. A criminal offense committed in another jurisdiction, including a conviction in a federal, military, or foreign court, which would constitute an indictable offense under paragraphs “1” through “4” if committed in this state.

*“Sexually violent predator”* means a sex offender who has been convicted of an offense which would qualify the offender as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. Sections 14071(a)(3)(B), (C), (D), and (E).

*“SORNA”* means the Sex Offender Registration and Notification Act, which is Title I of the federal Adam Walsh Child Protection and Safety Act of 2006.

*“Student”* means a sex offender who enrolls in or otherwise receives instruction at an educational institution, including a public or private elementary school, secondary school, trade or professional school, or institution of higher education. “Student” does not mean a sex offender who enrolls in or attends an educational institution as a correspondence student, distance-learning student, or any other form of learning that occurs without the person’s physical presence on the real property of an educational institution.

*“Superintendent”* means the superintendent or superintendent’s designee of a public school or the authorities in charge of a nonpublic school.

*“Tier I offender”* means a registrant who has been convicted of one or more of the offenses enumerated in 2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “a.”

*“Tier II offender”* means a registrant who has been convicted of one or more of the offenses identified in 2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “b,” and is not a “tier I offender.”

*“Tier III offender”* means a registrant who has been convicted of one or more of the offenses enumerated in 2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “c,” and is not a “tier I offender” or a “tier II offender.”

*“Vehicle”* means a vehicle owned or operated by an offender, including but not limited to a vehicle for personal or work-related use, and including a watercraft or aircraft, that is subject to registration requirements under Iowa Code chapter 321, 328, or 462A.

ITEM 3. Amend rule 661—83.3(692A) as follows:

**661—83.3(692A) Forms and procedures.** The following forms and procedures are prescribed for use with the Iowa sex offender registry. Supplies of these forms may be obtained by contacting the Iowa sex offender registry at the division of criminal investigation.

**83.3(1) Notification.** Form DCI-144, Notification of Registration Requirement, which notifies offenders of their duty to register with the Iowa sex offender registry, shall be provided, in printed form or electronically, to persons identified as being required to register. Failure to provide offenders with Form DCI-144 does not relieve offenders of their duty to register with the Iowa sex offender registry.

**83.3(2) Registration.**

a. Form DCI-145, Sex Offender Registration, shall be completed ~~by or~~ as required by 2009 Iowa Acts, Senate File 340, section 4, subsection 8, on behalf of each offender and submitted, in printed or electronic form, to the sheriff of ~~the~~ each county in which the offender will be residing, employed, or attending classes and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry. This form shall also be completed ~~by or~~ on behalf of each offender and submitted to the sheriff of ~~the~~ any county in which the offender will be a student, be employed, or be ~~engaging~~ engaged in a vocation on a full-time or part-time basis ~~at an institution of higher education~~, in order to satisfy the registration requirements of ~~Iowa Code section 692A.3A.~~

b. Form DCI-145, or information stored by the division of criminal investigation, shall be used to report changes of residence, telephone number, name of registrant, or change in status as a student, employee, or practicing a vocation at an institution of higher education. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of ~~the~~ any county of residence each time the registrant's ~~place of residence, telephone number, or name changes within five days of the change of residence, telephone number, or name, whether within or outside the state of Iowa~~ relevant information changes. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county in which the registrant is a student, employee, or practicing a vocation on a full-time or part-time basis at an institution of higher education within five days of the registrant's becoming a student, employee, or engaged in a vocation at the institution of higher education. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

(1) ~~If a registrant moves~~ any place of residence of a registrant changes from one county to another, the registrant shall submit copies, in printed or electronic form, of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

(2) When the department receives notification that a registrant has changed residence to a location outside of Iowa, the department shall notify the registering state agency in the registrant's new state of residence of the registrant's name, new address, and telephone number. Upon notification of the appropriate out-of-state agency, the department shall remove the registrant from the active registry, unless the registrant continues to maintain a residence or place of employment in Iowa or attends school in Iowa. The registrant shall not be required to submit ~~annual or quarterly~~ periodic verifications of address while ~~residing outside of Iowa, provided that the registrant is not a student at, employed by, or engaged in a vocation at an institution of higher education in Iowa~~ not on the active registry. The department shall maintain the registrant's file in the event the registrant establishes a residence in Iowa or becomes a student, employee, or practices a vocation at an institution of higher education in Iowa in the future. The department may also maintain the file for any other purpose.

c. Upon ~~initial~~ any submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender. ~~Current photographs of the registrant shall accompany submission of Form DCI-145 upon each subsequent submission of Form DCI-145 if a current photograph of the registrant has not been submitted within the year prior to the current submission of Form DCI-145.~~

d. A list of all registrants within a county may be provided by the division of criminal investigation to the county sheriff.

**83.3(3) ~~Annual~~ Periodic verification.** A registrant shall appear personally in the office of the sheriff of the county or counties of principal residence periodically as required by 2009 Iowa Acts, Senate File 340, section 8, to verify relevant information. A tier I offender shall appear annually, or more frequently if required by the sheriff; a tier II offender shall appear every six months, or more frequently if required by the sheriff; and a tier III offender shall appear every three months, or more frequently if required by the sheriff. Form DCI-146, ~~Annual~~ Periodic Verification of Address Notification Form, shall be mailed ~~annually~~ by the division of criminal investigation to each registrant at the last address known to the registry ~~during the month of original registration~~ at least 30 days prior to each required appearance.

~~Form DCI-146 shall be returned by the registrant to the division of criminal investigation within ten days of receipt. Form DCI-146 shall be mailed to the registrant in an envelope on which it is clearly stated~~ clearly state that it is to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

~~EXCEPTION: Form DCI-146 shall be mailed quarterly by the division of criminal investigation to each registrant who is a sexually violent predator to the last address known to the registry and shall be completed and returned to the division of criminal investigation by the registrant within ten days of receipt.~~

a. Each registrant shall report to the sheriff of a county of residence of the registrant within ten days of receipt of the ~~annual~~ periodic verification notification form. The sheriff shall take a current photograph of the registrant and shall submit the photograph to the registry.

b. The sheriff of any county of residence of a registrant may, at any time, instruct the registrant to report to the sheriff's office for the purpose of the taking of a current photograph. Such instructions shall be mailed to the registrant at the registrant's current address of registration. The registrant shall report to the sheriff's office within ten days of receiving such instructions. The sheriff shall submit the current photograph of the registrant to the registry.

**83.3(4)** *Updating relevant information not requiring personal appearance.* Any change in any item of relevant information other than changes of address, places of attendance as a student, or places of employment shall be communicated to the sheriff of the county of the registrant's principal residence in person, by telephone, or electronically, within five days of the change occurring. Any such change shall not be deemed to be completed until the registrant has received acknowledgment from the office receiving the change in printed or electronic form.

~~**83.3(4)**~~ **83.3(5)** *Application for determination.* Form DCI-148, Application for Determination, shall be completed by a ~~registrant person~~ registrant person to initiate a request that the department review whether one or more offenses of which the ~~registrant person~~ registrant person has been convicted require registration with the Iowa sex offender registry, whether the time period during which the ~~registrant person~~ registrant person is required to register has expired, ~~or~~ whether the ~~registrant person~~ registrant person is exempt from the placement of information on the sex offender registry Web site, and the tier placement of the offender. A ~~registrant person~~ registrant person who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts or law which the ~~registrant person~~ registrant person intends to present to the department in support of the application. Failure to submit any of the required information shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, relevant statutory provisions, and other records provided, and is material to the determination, the commissioner may refer the matter to an administrative law judge or presiding officer for a contested case hearing.

NOTE: Filing an application for determination does not excuse a person from having to comply with any of the applicable provisions of Iowa Code chapter 692A as amended by 2009 Iowa Acts, Senate File 340, during the period prior to the issuance of the decision of determination.

~~**83.3(5)**~~ **83.3(6)** *Decision of determination.*

a. Form DCI-149, Decision of Determination, shall be used by the division of criminal investigation to notify a ~~registrant person~~ registrant person who has submitted ~~a request~~ an application for determination (Form DCI-148) of the results of that review. A completed Form DCI-149 shall be mailed to any ~~registrant person~~ registrant person who has filed a completed Form DCI-148 within 90 days of the receipt by the division of criminal investigation of the completed Form DCI-148 and all required supporting documents. A decision of determination shall be signed by the commissioner and shall constitute final agency action for the purposes of Iowa Code chapter 17A.

b. If an administrative law judge or presiding officer has been assigned to hold a hearing regarding an application for determination, the administrative law judge or presiding officer shall prepare a proposed decision of determination. The proposed decision of determination shall be reviewed by the commissioner who may uphold or modify the proposed decision of determination and shall then sign a

final decision of determination. The final decision of determination shall constitute final agency action for the purposes of Iowa Code chapter 17A.

~~83.3(6)~~ **83.3(7)** *Request for information.* Requests for information about whether a specific individual is registered shall be made to a county sheriff or local police department and may be made in person, by telephone, or in writing. Form DCI-150, Request for Registry Information, may be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry may submit a completed copy of Form DCI-150 to a sheriff or police department. If a request for information is submitted using Form DCI-150, a separate form shall be submitted for each person about whom information is being requested.

~~83.3(7)~~ **83.3(8)** *Confidential records.* Completed forms filled out pursuant to rules 661—83.1(692A) through 661—83.5(692A) are confidential records that shall not be released to the public.

**83.3(9)** *Fees.* Each registrant shall pay a fee of \$25 to the sheriff of the county in which the registrant maintains a principal residence upon establishment of the principal residence and annually thereafter. If the registrant maintains more than one principal residence simultaneously, the fee shall be paid only to the sheriff of the county in which the registrant first registered on or after July 1, 2009, and continues to register.

ITEM 4. Amend **661—Chapter 83**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 692A as amended by 2009 Iowa Acts, Senate File 340.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/29/09.